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REVIEWS OF BOOKS

GENERAL BOOKS AND BOOKS OF ANCIENT HISTORY

The Science of Jurisprudence: a Treatise in which the Growth of Positive Law is Unfolded by the Historical Method and its Elements Classified and Defined by the Analytical. By HANNIS TAYLOR, LL.D. (New York: The Macmillan Company. 1908. Pp. lxxv, 676.)

MR TAYLOR tells us (p. 31): "The primary purpose of that branch of the Historical Method known as Comparative Politics is to classify and label the outer shells of states as represented by their political constitutions; the primary purpose of that branch of the same method known as Comparative Law is to classify and label the interior codes under which rights recognized by law are enforced by state authority . . . No matter whether we look to the ancient or modern world, it appears that Comparative Law has ever been the subsidiary science which collects the data to which the science of jurisprudence has been and must be applied."

In view of this statement it is surprising to find nearly one-half of the book devoted to the description of political institutions, which are only remotely, if at all, relevant to the subject indicated by the title. What is called the External History of English Law, covering no less than 272 pages, is nothing but an outline of the growth of the British constitution; the foundation of our own national constitution, especially as foreshadowed in an "epoch making tract" of Pelatiah Webster (printed in full in the appendix) occupies the chapter entitled English Law in the the United States; while under the curious title Roman and English Law Combined we get chiefly an account of the Latin American governments.

Mr. Taylor's theory seems to be that private law cannot be understood without a thorough comprehension of political institutions. "If it be true that law proper is such only when it is enforceable as a command emanating from the corporate person of the state, acting through that organ in which the sovereign power is vested, it follows that the state, as a living and growing organism, should be so analyzed by the jurist as to lay bare all of its organs and their functions" (p. 503). An obvious fallacy; as well might it be said that we cannot study the law of corporations without studying the state, since the corporation is the creature of the state. The production and enforcement of private law

is but one of many functions of the state, and to its political factors generally quite a secondary function. If the jurist is interested in government except as it bears directly upon private law, it is because government is a distinct province of life in which the idea of law expresses itself; the problems of law in this province, however, and in most countries the methods and organs of its development, have been so different from those of private law, that a conventional differentiation has taken place, according to which jurisprudence has become associated with the science of private law.

For the "unfolding of the growth of positive law by the historical method" we turn to ch. III. entitled External History of Roman Law. Down to the codification of Justinian this offers a readable account of a familiar topic; the continuation of the history of the civil law in continental Europe contains some valuable material not otherwise easily accessible to English or American readers. As a summary of existing legal systems this latter portion of the chapter challenges comparison with Renton and Phillimore's corresponding chapter in their recent work on Colonial Laws and Courts, which is more complete. The omission of any mention of the new Swiss Civil Code with the valuable notes of its draftsman—in themselves a first-class treatise on jurisprudence—seems unpardonable. Had Mr. Taylor expanded this part of his book by sacrificing other material not having a legitimate place in it, he would have placed his readers under obligation.

In a chapter of 94 pages entitled Law Proper or State Law, Mr. Taylor attempts to present an analysis of law and of legal relations and a classification of the divisions of the law. The treatment of the various topics is uneven, and in some cases (*e. g.*, quasi-contract and administrative law) inadequate. The observations on remedial law and the sources of law are on the whole the most satisfactory part of this chapter. We have, however, to note the unaccountable misstatement that "in nearly all the states of the Union carefully prepared codes have appeared in which is restated, on the Roman plan, in titles, chapters, and sections, the entire body of law of the particular state, resting everywhere, except in Louisiana, upon an English basis" (p. 517).

The author's view of the nature of international law is indicated by the fact that he treats of it as under the head of Law by Analogy. In this connection we also find very unexpectedly a brief discussion of the composite types of state organization. The closing chapter on International Rules to Prevent Conflict of Laws belongs to the most satisfactory portions of the book. However, in view of the long list of writings, some of them of quite second-rate importance, which the author enumerates, it is surprising that he has not a word to say about the Hague Conferences of 1893, 1894 and 1900, surely the most noteworthy recent development in the history of international private law.

On the whole, the book is not sufficiently systematic, complete, or

accurate to serve the purpose of an elementary treatise on jurisprudence. Nor does it succeed, on the other hand, in contributing to the solution of fundamental problems or even in presenting them in a new light. Coming from an author of such distinguished reputation as Mr. Taylor enjoys, the impression which the work leaves is one of disappointment. A timely essay might be written on the topic "of the vocation of eminent lawyers for the science of jurisprudence".

E. F.

General History of Western Nations from 5000 B. C. to 1900 A. D.

By EMIL REICH, Doctor Juris. Volumes I. and II. *Antiquity*. (London and New York: Macmillan and Company. 1908. Pp. xxvi, 485; x, 479.)

THE author's idea of his subject is the most interesting feature of the present work, and may be briefly stated as follows. General history is not a summary of special histories, as is ordinarily assumed, but a study of large facts. "At the basis of all that happened in the history of western nations there is a series of some twenty to thirty general facts, which singly, and still more by meeting, blending, or antagonizing one another, created a multitude of particular facts." The treatment of these general truths in the present volumes is not philosophy, which depreciates teleological reasoning; it is rather psychology in that it has to do with motive as a primary cause. In this respect the author claims his work to be superior to that of other historians, among whom "it is not considered good form to try to know more than one's sources, which is precious little." The chief contents of history, he continues, are institutions, events and persons. Because of the static character of institutions we are in a position to know them much better than the other two elements, and must therefore make them the basis of our study. Institutions repeat themselves, though persons and events do not. It is possible for us accordingly by the direct study of some modern institution, analogous to one of ancient times, to find a means of getting into closer touch with the real psychological essence of the earlier institution. The only way to gain this knowledge of present conditions is by long sojourns in the countries in which they exist. Most historians are of the "arm-chair" type; they are utterly impractical, their vision is narrow, and they are hampered by their philological method.

In his treatment of events and their relation to institutions he contests the theory represented by Eduard Meyer and Seignobos that history is a chain of accidents. It is in fact, he asserts, the science of correlations, which are affected by chance occurrences no more than comets and meteors affect the regularity of the solar system. A correlation is the psychological motive underlying two or more historical phenomena and bringing them into unity. The history of the